

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

The Administrative Law Judge determined the respondent, Rusty Eck Ford, and its insurance carrier, Liberty Mutual Insurance Company, were responsible for payment of claimant's medical and temporary total disability benefits. Rusty Eck Ford and Liberty Mutual requested this review and contend claimant's benefits should be paid by a later employer, Advanced Engine Rebuilders. The sole issue on this review is whether claimant's present need for preliminary benefits is the result of the February 1994 accident

while employed by Rusty Eck Ford or a later accident sustained while employed by Advanced Engine Rebuilders.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

(1) As the ultimate issue is whether claimant's need for medical treatment is the result of the work-related accident he sustained while working for Rusty Eck Ford or the result of an injury or aggravation he sustained while working for Advanced Engine Rebuilders, the Appeals Board has the jurisdiction and authority to review this proceeding under K.S.A. 44-534a, as amended by S.B. 649 (1996).

(2) The Appeals Board finds the preliminary hearing Order of the Administrative Law Judge should be modified to require the respondent, Advanced Engine Builders, and its insurance carrier, Farm Bureau Mutual Insurance, to provide claimant's benefits.

From April through October 1994, Lawrence R. Blaty, M.D., treated claimant for the low back injury he sustained while working for Rusty Eck Ford in February 1994. After an issue arose as to whether claimant sustained subsequent injury while working for Advanced Engine Rebuilders, Administrative Law Judge Nelsonna Potts Barnes, in January 1996, appointed Dr. Blaty to perform an independent medical evaluation. In his report dated February 14, 1996, which was introduced into evidence at the preliminary hearing, Dr. Blaty states:

"I feel the problems he is experiencing at this time are a continuation of the initial injury which occurred in 1994; however, I also feel the activities he has been continuing to do, mainly working with machine equipment, have continued to exacerbate his problems and have contributed to his condition at this time."

The reference in Dr. Blaty's letter regarding working with machine equipment relates to claimant's job with the respondent, Advanced Engine Rebuilders, which claimant performed from October 1994 through November 1995 when he left work due to his increased low back symptoms. Based upon Dr. Blaty's opinions, the Appeals Board finds that claimant has sustained an exacerbation and aggravation of his low back condition because of his work activities while employed with Advanced Engine Rebuilders. Therefore, Advanced Engine Rebuilders, rather than Rusty Eck Ford, is responsible for claimant's preliminary hearing benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Shannon S. Krysl dated March 7, 1996, should be, and hereby is, modified; that the respondent, Advanced Engine Rebuilders, and its insurance carrier, Farm Bureau Mutual Insurance, should be, and hereby are, ordered to provide the temporary total disability and medical benefits to which claimant is presently entitled by preliminary hearing Order dated March 7, 1996.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Douglas D. Johnson, Wichita, KS
Mary Giovanni, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director